IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.921 of 2007

Raj @ Rajkumar @ Siva .. Petitioner

Vs

1. The Secretary to Govt.
   Prohibition and Excise Department
   Secretariat, Chennai-9.

2. The Commissioner of Police
   Chennai City
   Egmore, Chennai 600 008. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.S.Ramesh Babu
For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

ORDER

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner calls in question legality of the order of detention 28.5.2007 passed by the second respondent ordering his detention under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum-Grabbers and Video Pirates Act, 1982 (in short “the Act”) branding him as an "Immoral Traffic Offender".

2. According to the detaining authority, viz., the second respondent, the ground case is said to have taken place on 7.5.2007 at about 6.30 p.m. on the basis of the complaint lodged by one Jabaraj. According to the complainant, when he was waiting for bus at Velacherry bus stand, one Nandhagopal came and solicited him for prostitution by showing three teenage girls. The complainant replied that he would come back with money and lodged a complaint in this regard. A case was registered in Crime

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No.37 of 2007 on the file of Anti Vice Squad Police Station, Chennai City, for the offences punishable under Sections 3(1), 4(1), 5(1), 6(1) and 7(1) of ITP Act. During investigation, the said Nandhagopal gave a confession statement, based on which, the detenu herein, who, under the guise of getting chance in cinema and TV serials, forced some girls into prostitution business, for earning huge money, was arrested on 7.5.2007 and remanded to judicial custody.

3. The second respondent, taking note of the above case as a ground case and finding that there are two adverse cases pending against the detenu for the offences punishable under Sections 4(1), 5(1) and 7(1) of the ITP Act in Crime Nos.14 and 15 of 2007 on the file of Anti Vice Squad Police Station and having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as an Immoral Traffic Offender.

4. The learned counsel for the petitioner challenges the impugned order of detention only on the ground of delay in preparing the rejection order.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have

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occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6. Coming to the case on hand, admittedly, objecting to the order of detention dated 28.5.2007, a representation was made on behalf of the detenu on 20.6.2007, which was received by the Government on 21.6.2007. Remarks were called for from the detaining authority on 22.6.2007, who, in turn, called for parawar remarks from the sponsoring authority and on receipt of the same, the detaining authority sent it to the Government and the same was received on 2.7.2007. Thereafter, the file was submitted on 3.7.2007 and the same was considered by the Under Secretary and Additional Secretary on 5.7.2007. The file was considered by the Minister on 6.7.2007. However, the rejection letter was prepared on 16.7.2007, after a delay of ten days, which is not properly explained. Even taking note of the intervening holidays, viz., 7.7.2007, 8.7.2007, 14.7.2007 and 15.7.2007 (being Saturday and Sunday), the delay of six days in preparing the order of rejection, is admittedly unexplained and inexcusable. Thereafter, the order of rejection was sent on 17.7.2007 and served on the detenu on 18.7.2007

7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his

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representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

9. In the instant case, there is delay of six days in preparing the order of rejection, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition.

In the result, the order of detention dated 28.5.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ATR

To:

1. The Secretary to Govt.
   Prohibition and Excise Department
   Secretariat, Chennai-9.

2. The Commissioner of Police
   Chennai City, Egmore, Chennai 600 008.

3. The Superintendent
   Central Prison, Puzhal, Chennai.

4. The Public Prosecutor, High Court, Madras.

5. The Joint Secretary to Government,
   Public (Law and Order), Fort St.George, Chennai -9.

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RVL 10.10.2007

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